



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2004

Mrs. Kimberly A. Frost
Vinson & Elkins
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746

OR2004-7544

Dear Ms. Frost:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208491.

Texas CASA, Inc. ("CASA"), which you represent, received a request for communications to or from any judges since November 1, 2003; socio-economic information of CASA board members, staff, and volunteers; final minutes for each CASA board meeting since September 1, 2003; and copies of notes from each board meeting "from the person designated to take notes to prepare board minutes[.]" You state that some information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that CASA originally received another request for similar information from a different requestor. This request was dated June 25, 2004, and received on that same date. You state, and provide documentation showing, that you provided this requestor with an itemized cost estimate as required by section 552.2615(a) of the Government Code. Further, you state that the requestor did not respond to the estimate as required by section 552.2615(b). Accordingly, this request was withdrawn by operation of law. *See* Gov't Code § 552.2615.

We now turn to your arguments for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by

law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information other statutes make confidential. You claim that all of the submitted information is confidential pursuant to section 264.613 of the Family Code, which pertains to children’s advocacy services and provides:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this subchapter.

(b) Information described by Subsection (a) may be disclosed to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families;

(2) the attorney for the child who is the subject of the information;
and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

Fam. Code § 264.613. In this instance, you do not demonstrate, nor does the information reflect, that the submitted information consists of any “files, reports, records, communications, and working papers used or developed in providing services under this subchapter” for purposes of section 264.613. Thus, you may not withhold any of the submitted information under section 552.101 in conjunction with section 264.613.

Next we address your argument that the identities of the donors, volunteers, contributors, and board members of CASA are excepted from disclosure under section 552.101 of the Government Code in conjunction with the First Amendment to the United States Constitution. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization’s list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488

(1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). "[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.*

Bay Area Citizens, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that "the burden must be light." *Id.* at 376. Quoting the United State Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* Such proof may include "specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself." *Id.*

You seek to withhold information pertaining to CASA's volunteers and donors under section considered your arguments and all of the submitted information, we find that the disclosure of the identities of CASA's contributors will burden First Amendment rights of freedom of association. We believe the term "contributor" encompasses both the identities of those individuals and corporations who make financial donations to CASA and volunteers who donate their time and services to CASA. However, we note that the term "contributor" does not encompass members of CASA's governing board. *See generally* Gov't Code § 552.022(a)(2). In addition, *Bay Area Citizens* does not make confidential information pertaining to the donations themselves, such as the amount donated or types of donations. *See Bay Area Citizens*, 982 S.W.2d at 376-77 (only the names of contributors were at issue). Therefore, you must withhold the information that identifies contributors under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. We emphasize that the information must be withheld on this basis only to the extent reasonable and necessary to protect the identity of the contributor.

You also state that portions of the remaining submitted information are protected under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under

section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employees whose information is at issue timely elected to not have their personal information released. We have also marked some information that must be withheld pursuant to section 552.117(a)(1) only if the individual to whom the information pertains is a current or former official of CASA who timely elected to keep their personal information confidential pursuant to section 552.024. Therefore, pursuant to section 552.117(a)(1), CASA must withhold the information we have marked, provided that exception applies.

Finally, we address your argument under section 552.137 of the Government Code for the e-mail addresses of individuals other than CASA contributors, whose identifying information is protected by the right of association. You assert that the remaining submitted information contains e-mail addresses that are subject to section 552.137, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address, because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Accordingly, you must withhold the e-mail addresses of members of the public under section 552.137, unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

In summary, CASA must withhold the information that identifies contributors under section 552.101 in conjunction with the First Amendment right of association, unless the contributors have waived their right of association. CASA must withhold the section 552.117 information we have marked, unless that exception does not apply. Unless CASA has received affirmative consent to release any of the submitted e-mail addresses, it must withhold them pursuant to section 552.137. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 208491

Enc. Submitted documents

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